



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 696

IN THE MATTER
OF
STEPHEN V. SHIRAKA

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Stephen Shiraka pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On August 14, 2003, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Shiraka. The Commission has concluded its inquiry and, on October 7, 2003, found reasonable cause to believe that Shiraka violated G.L. c. 268A, § 23(b)(3).

The Commission and Shiraka now agree to the following findings of fact and conclusions of law:

-Findings of Fact-

1. Since June 2000, Shiraka has served as the Manager of Facilities and Grounds for the Old Rochester Regional School District (the "School District"). The School District serves three towns: Marion, Mattapoisett and Rochester. Shiraka reports to the School District's Associate Superintendent for Finance and Planning.

2. While Shiraka is employed by the School District, which operates the regional middle school and high school, his responsibilities extend to the Marion, Mattapoisett and Rochester elementary schools. Shiraka's job responsibilities include acting as supervisor on all new construction projects as representative of the School District and the town School Committees.

3. In December 2000, Mattapoisett, through its school building committee, retained Turner Construction Company ("Turner") to serve as project manager on the modernization and expansion of its two elementary schools. Shiraka attended – together with Turner representatives, the architect, and school building committee members – weekly progress meetings, and performed site visits with this group as well. He also advised School District and Mattapoisett officials on Turner's management of the modernization and expansion.

4. Between October 2001 and January 2002, Shiraka, acting in his private capacity, logged 44.25 hours reviewing documents for Turner in connection with two Turner projects in other school districts. He was paid \$25 per hour, and so was paid more than \$1,100 for his document review. At the same time he was reviewing these documents for Turner, Shiraka was advising School District and Mattapoisett officials on Turner's management of the modernization and expansion.

5. According to Shiraka, prior to performing the document reviews for Turner, he had orally apprised the School District's superintendent of his work, and she approved the arrangement. He did not file a written disclosure. The superintendent does not recall discussing the matter with Shiraka, but stated that she would not have had a problem with it if she had known.

6. In summer 2002, the Dennis-Yarmouth Regional School District was seeking a project manager to oversee the renovation of its high school. Turner bid for and won the Dennis-Yarmouth contract, and retained Shiraka as a part-time Turner consultant on the project on retainer for \$3,000 per month. Shiraka continued to work full-time for the Old Rochester Regional School District.

7. Shiraka began his work as a consultant for Turner in November 2002, earning \$3,000 per month. Turner paid Shiraka \$18,000 for his first six months of work.

8. Shiraka's immediate School District supervisor, the School District superintendent, and the Mattapoisett building committee chair all informally approved of Shiraka's work for Turner. Shiraka did not file a written disclosure, and the approvals were not in writing.

9. In spring 2003, when the Commission began to review this matter, Shiraka and Turner suspended the consulting arrangement.

-Conclusions of Law-

10. G.L. c. 268A, § 23(b)(3) prohibits a municipal employee from, knowingly or with reason to know, acting in a manner that would cause a reasonable person having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy the employee's favor in the performance of the employee's official duties, or that the employee is likely to act or fail to act as the result of kinship, rank, position or undue influence of any party or person. A municipal employee can avoid a violation of §23(b)(3) by making an advance written disclosure to his appointing authority of the facts that would lead a reasonable person to conclude that he could be unduly influenced.

11. By advising Mattapoisett on its supervision of Turner while being paid privately by Turner to review documents and later while serving as a paid consultant for Turner on another district's construction project, Shiraka acted in a manner that would

cause a reasonable person to believe that Turner could unduly enjoy his favor in the performance of his official duties. Shiraka filed no written disclosures.

12. The law's provision for advance written disclosure to dispel the appearance of a conflict of interest is not a technical requirement. Such a written disclosure is a public record; it avoids later disputes over whether an arrangement was disclosed, and more important subjects the arrangement to public review. That public review usually leads to a heightened review of the arrangement by those officials charged with overseeing the public employee's performance.

13. Despite Shiraka's good faith effort to secure his superiors' approval of his consulting work, because of the failure to file a written disclosure neither Shiraka's arrangement with Turner nor his appointing authority's awareness of that arrangement was open to public scrutiny. Given the nature of Shiraka's relationship with Turner, it would be very difficult for a member of the public to discover the relationship, absent a written disclosure.¹

-Resolution-

In view of the foregoing violation of G.L. c. 268A by Shiraka, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Shiraka:

- 1) that Shiraka pay to the Commission the sum of \$1,000.00 as a civil penalty for violating G.L. c. 268A, § 23(b)(3); and
- 2) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: January 5, 2004

¹ While a public employee's supervisors should appreciate the need for a written disclosure in cases such as this, ultimately it is the employee's responsibility to comply with the law.